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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/555,305
Filing Date: November 02, 2005
Appellant(s): GRAUTE ET AL.

Matthias Scholl
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 3, 2009 appealing from the Office action mailed March 11, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

7,413,224	GRAUTE	8-2008
6,641,184	ERICES et al	11-2003
4,739,896	MOSS	4-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a

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nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11-15, 17-24, and 26-36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 17 of U.S. Patent No. 7,413,224. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claims 11-15, 17-24, and 26-36 of the instant application requires a lever comprised of a basic lever and lever element(s), wherein one of the lever elements is a separate part that is attached to the basic lever. This limitation is presented in at least claim 17 of the '224 patent, since the claim requires a lever comprised of a basic lever (5) having a lever element (17) as separate members attached by a weld.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 11-28 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat No 4,739,896 to Moss.

Moss discloses a "multifunctional" lever comprising a basic lever (32) and lever element(s) (30, 52). The basic lever and the one or more lever elements are capable of performing an actuating function. The basic lever and the lever elements are made of one of the group consisted of metal, plastic or a combination of metal and plastic. Moss further discloses that the basic lever (32) and one of the lever elements (30) are separate parts connected together (Col. 5 Lines 39-52).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,641,184 to Erices et al (Erices '184) in view of US Pat No 4,739,896 to Moss.

Erices '184 discloses a "multifunctional" lever comprising a basic lever (5) and lever elements (5', 10 and 16). The "multifunctional" lever is used in combination with a door latch comprising a claw (3) and a pawl (4). The basic lever and the one or more lever elements are capable of performing an actuating function. The basic lever and the lever elements are made of one of the group consisted of metal, plastic or a combination of metal and plastic. The basic lever and the lever elements have

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the same axis of rotation (20) and are mechanically actuated achieved by a driving wheel (9) of a motor driven device (6).

However, Erices '184 fails to disclose that one of the lever elements is a separate member connected to the basic lever.

Moss teaches that it is well known in the art to provide lever comprised of a basic lever (32) and one or more lever elements (30 and 52). The basic lever and at least one lever element (30) are separate parts. Further, the basic lever and the lever element are rigidly and inseparably connected to the basic lever (by welding).

The fact that the connection is either a rivet, a weld, a bolt, a clip, a snap-fit, a weld or glue is considered as a design consideration within the art that has no patentable weight.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the "multifunctional" lever described by Erices '184 as separate elements connected together, as taught by Moss, since separate elements connected together instead of a one-piece embodiment, is a design consideration within the skill of the art.

(10) Response to Argument

Section 1:

The applicant argues the double patenting rejection to claims 11-36 in view of claim 17 of Graute.

The applicant argues that claim 17 does not teach all the limitations presented in the independent claims 11, 20, and 29.

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At the moment, claims 11, 20 and 29 **just requires** a lever that is composed of one or more lever elements for performing one or more functions and that the lever elements are connected together.

Graute clearly discloses these limitations. Claim 17 requires a lever (5) composed of one or more lever elements (5 and 17) that perform one or more functions and that the lever elements are connected together (by a weld). Therefore, claim 17 of Graute clearly anticipate the limitations claimed in claims 11, 20 and 29.

As to the depended claims 17 and 26, Graute levers 5 and 17 shares the same axis of rotation. Therefore, the double patenting rejection should be maintaining.

However, as to claims 16 and 25, the double patenting rejection is withdrawn since Graute fails to disclose that limitation.

Section 2:

The applicant argues the current 112 2nd paragraph rejection to claims 11-36. After further consideration, the Office decides that the current 112 2nd paragraph rejection should be withdrawn. Therefore, the arguments were persuasive and the 112 2nd paragraph rejection has been withdrawn.

Section 3:

The applicant argues the rejection of claims 11-28 in view of Moss. The applicant argues the levers 30 and 32 do not carry any actuating portion. The applicant also states that levers 30 and 32 does not put something into motion, or activate something, etc.

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Claims 11 and 20 **just requires** a “multifunctional” lever that is composed of a basic lever and one or more lever members attached to the basic lever.

Moss discloses the invention **as claimed**. Moss discloses a “multifunctional lever” that is comprised of a basic lever (32) and one or more lever members (30).

Basic lever 32 is capable of having an actuation function since actuation movement of lever 32, will perform a function (lock or unlock).

Lever member 30 is also capable of having an actuation function since actuation movement of lever 30 will perform another function (move the lever 32). Therefore, both lever functions are considered as “actuating function” since the functions are related to the movement or actuation of the levers.

The applicant argues that his actuation functions are “putting something into motion, or activate something” according to a definition founded by the applicant (Page 12 Line 6).

First, the current claim language fails to clearly distinctive these actuating functions.

Where are these limitations, “not put something into motion, or activate something, etc.”, presented in the claim language?

Second, **even** if this definition is considered, Moss device is capable of performing the defined limitations.

Moss device is used to close an access lid. One inside the area where the lid is positioned (since it can be a loading area), can push on lever 32 in order to move lever 30 (putting something in motion) or pulling 30 can pivot lever 32 (putting something in motion). Therefore, even if we consider this definition, Moss discloses the invention as

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claimed. Therefore, the arguments are not persuasive. The Board of Appeals should maintain the rejection.

The applicant further argues the rejections to claims 16 and 25, arguing that Moss fails to disclose that the basic lever is connected to three or more levers.

As clearly shown in figure 4, Moss discloses that the basic lever (32 left, for example) is connected to a lever member (30 left) and to another lever members (70 and 30, 32 at the right), each having an “actuating function”. Therefore, the arguments are not persuasive. The Board of Appeals should maintain the rejection.

Section 4:

The applicant argues the rejection to the claims in view of Erices '184, as modified by Moss. The applicant argues that separating the elements presented by Erices '184 and then attach them together will destroy the device described by Erices '184.

As to claims 11 and 20, as mentioned before, the claims **just requires** a “multifunctional” lever that is composed of a basic lever and one or more lever members attached to the basic lever.

As to claim 29, the claim further requires a catch and a pawl, **not even related to the basic lever**.

Erices '184 discloses a “multifunctional” lever (5) that comprises one or more lever members (5', 10 and 16). At least one of these lever members (10) is in a separate position with respect to the basic lever by means of a step portion. This step portion attaches both levers together.

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Moss is used to demonstrate that two lever members can be provided as separate members that are connected together by connecting means (welding).

Further, the Board of Appeals has concluded that separate members fastened together, in place of a one-piece member, is a design consideration within the skill of the art when there is no clearly criticality in the performance of the device. At the instant, welding parts 5 and 10 together will not affect the performance or the mechanical movement of the device. Therefore, the arguments are not persuasive. The Board of Appeals should maintain the rejection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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